

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LAMAR ELLIS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL
REVENUE; JONATHAN ANDREWS,

Respondent.

CASE NO. 10cv2251-IEG(BGS)

Order Granting Respondent's Motion
to Dismiss Petition

Petitioner Lamar Ellis seeks to quash an IRS summons issued to the Custodian of Records of GODADDY.COM, Inc. The government has filed a motion to dismiss the petition for lack of subject matter jurisdiction. Petitioner did not file an opposition to the motion.¹ The Court previously found the motion appropriate for submission on the papers and without oral argument. The government's motion to dismiss is GRANTED.

Discussion

The government moves to dismiss the petition under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction.

I. Revenue Agent Jonathan Andrews

The doctrine of sovereign immunity bars actions against federal officers in their official

¹Petitioner filed a notice of stay of proceedings, citing ongoing proceedings before the U.S. Tax Court. Nothing in the tax court statutes or rules, however, require a stay of federal court proceedings pending the resolution of matters pending in that court.

1 capacity. In such cases, the proper defendant, if any, is the United States. Gilbert v. DaGrossa,
 2 756 F.2d 1455, 1458 (9th Cir. 1985) (a suit against IRS employees in their official capacity is
 3 essentially a suit against the United States). The only relief sought by Petitioner is to quash the
 4 summons issued by Revenue Agent Andrews in accordance with 26 U.S.C. §§ 7602 and 7603.
 5 Such claim against Revenue Agent Andrews is barred by sovereign immunity. Gilbert, 756 F.2d
 6 at 1459.

7 2. Suit Against the United States

8 The United States is immune from suit unless there is a valid waiver of sovereign
 9 immunity. Valdez v. United States, 56 F.3d 1177, 1179 (9th Cir. 1995). The only statute providing
 10 the court with jurisdiction to quash an IRS summons is 26 U.S.C. § 7609(b). Section 7609(b),
 11 therefore, is the exclusive method by which a taxpayer can challenge a summons issued by the
 12 IRS. Ponsford v. United States, 771 F.2d 1305, 1309 (9th Cir. 1985). The procedures for filing a
 13 petition to quash are set forth in § 7609(b) as follows:

14 (A) In general. – Notwithstanding any other law or rule of law, any person who is entitled
 15 to notice of a summons under subsection (a) shall have the right to begin a proceeding to
 16 quash such summons not later than the 20th day after the day such notice is given in the
 manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to
 compel compliance with the summons.

17 Pursuant to subsection (b)(2)(A), the petition to quash must be filed within 20 days after
 18 notice of the summons is given to the taxpayer. This 20-day period is jurisdictional, and the court
 19 must dismiss a petition not filed within that time period. Ponsford, 771 F.2d at 1309; Clay v.
 20 United States, 199 F.3d 876, 879 (6th Cir. 1999); Faber v. United States, 921 F.2d 1118, 1119 (10th
 21 Cir. 1990). The 20-day time period under § 7609(b)(2)(A) begins to run on the date that notice of
 22 the summons is *mailed* to the taxpayer, not the date on which it is received. Berman v. United
 23 States, 264 F.3d 16, 18-19 (1st Cir. 2001); Clay, 199 F.3d at 878; Stringer v. United States, 776
 24 F.2d 274, 275-76 (11th Cir. 1985); 26 C.F.R. § 301.7609-4(b)(2) (requiring that proceeding to
 25 quash a summons be instituted “not later than the 20th day following the day the notice of the
 26 summons was served on or mailed to such person”). Section 7609(a)(2) provides that notice given
 27 to a taxpayer is “sufficient” if it “is mailed by certified or registered mail to the last known address
 28 of such person, or, in the absence of a last known address, is left with the person summoned.” This

1 language evidences an intent to relieve the government of the obligation to provide actual notice to
2 the taxpayer. Berman, 264 F.3d at 19.

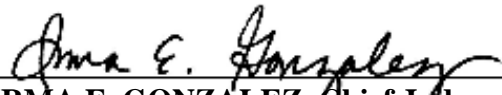
3 Here, Petitioner filed his petition to quash on October 29, 2010, 29 days after the
4 government sent notice of the summons to him by certified mail on September 30, 2010. Thus, the
5 petition is untimely and the Court lacks jurisdiction.²

6 **Conclusion**

7 For the reasons explained herein, the government's motion to dismiss is GRANTED. The
8 petition to quash is dismissed.

9 **IT IS SO ORDERED.**

10 **DATED: March 22, 2011**

11 
12 **IRMA E. GONZALEZ, Chief Judge**
13 **United States District Court**

14
15
16
17
18
19
20
21
22
23
24
25
26 ²The government asserts the Court lacks subject matter jurisdiction because (1) under 26
27 U.S.C. § 7609(h), the petition to quash must be filed in the district where the summoned party
28 "resides or is found," and (2) the petition to quash was not filed until after the response date for the
summons. In addition, the government argues the Court lacks personal jurisdiction over the
United States because the petitioner did not properly serve the petition. Because the Court
concludes the petition was filed beyond the jurisdictional time period set forth in § 7609(b)(2)(A),
it need not address these additional arguments.